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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

ORACLE AMERICA, INC.

Plaintiff,

v.

GOOGLE, INC.

Defendant.

Case No. CV 10-03561 WHA

**[PROPOSED] ORDER GRANTING
ORACLE AMERICA, INC.'S MOTION TO
EXCLUDE PORTIONS OF THE EXPERT
REPORTS OF GREGORY K. LEONARD
AND ALAN J. COX**

Dept.: Courtroom 8, 19th Floor
Judge: Honorable William H. Alsup

1 This matter came before the Court on Oracle America, Inc.'s Motion to Exclude Portions of the
2 Expert Reports of Gregory K. Leonard and Alan J. Cox.

3 For the reasons stated in that motion, as well as the supporting materials on file and any other
4 relevant matter, the Motion is hereby GRANTED. The Court hereby STRIKES the following portions
5 of the Expert Report of Dr. Gregory K. Leonard:

- 6 • Section III.B.3, pp. 10-31
- 7 • Section IV.B, pp. 74-78
- 8 • Section IV.E.1, p. 80
- 9 • Section IV.E.2, pp. 80-81
- 10 • Section IV.E.3, pp. 81-82
- 11 • Section IV.E.4, pp. 82-85
- 12 • Section IV.F, pp. 87-89
- 13 • Section VI, pp. 107-116.
- 14 • To the extent they are not contained in any of the preceding sections, any proposition for
15 which Dr. Leonard cites only to interviews, including the sentences corresponding to
16 footnotes 18, 22, 23, 28, 32, 36, 37, 41, 44, 46, 47, 50, 58, 73, 74, 81, 90, 91, 93, 94, 110,
17 128, 131, 160, 237, 255, 256, 258, 263, and 279.
- 18 • To the extent they are not contained in any of the preceding sections, any opinion that states,
19 in substance, that (1) Google had non-infringing alternatives to the patents-in-suit; (2) Java
20 was or is fragmented, and the extent of such fragmentation; (3) Android does not cause
21 fragmentation of Java; (4) the survey or conjoint analysis prepared by Professor Shugan is
22 unreliable; or (5) mitigation or lack thereof should be taken into account in assessing
23 damages.

24 The Court hereby STRIKES the following portions of the Expert Report of Dr. Alan M. Cox:

- 25 • Section IV.A.3, pp. 22-23
- 26 • Section IV.A.4, pp. 23-27
- 27 • Section F.2, pp. 43-54

- To the extent they are not contained in any of the preceding sections, any proposition for which Dr. Cox cites only to interviews, including the sentences corresponding to footnotes 85, 86, 87, 88, 91, 94, 96, 100, 104, 105, 117, 153, 156, 190, 225, and 226.
- To the extent they are not contained in any of the preceding sections, any opinion that states, in substance, that (1) Google had non-infringing alternatives to the copyrights-in-suit; (2) Java was or is fragmented, and the extent of such fragmentation; (3) Android does not cause fragmentation of Java; (4) the survey or conjoint analysis prepared by Professor Shugan is unreliable; (5) mitigation or lack thereof should be taken into account in assessing damages; or (6) non-infringing alternatives should in any way affect the calculation of infringer's profits under 17 U.S.C. § 504(b).

At trial, neither Dr. Cox nor Dr. Leonard may offer an opinion as to the following matters:

- Whether Google had acceptable non-infringing alternatives to the patents- and copyrights-in-suit;
- Whether or the extent to which Java was or is fragmented;
- Whether Android causes fragmentation of Java;
- Whether the survey and conjoint analysis prepared by Professor Shugan is unreliable;
- The effect on damages of any effort by Sun to mitigate its damages;
- The effect on infringer's profits damages for copyright of the presence or absence of non-infringing alternatives; and
- Any matter that either Dr. Cox or Dr. Leonard learned only through an interview.

IT IS SO ORDERED.

Dated: _____

WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE